

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----x  
MOHAMMED L. ALI

Plaintiff,

-against-

**COMPLAINT  
AND DEMAND FOR  
JURY TRIAL**

CITY OF NEW YORK; and individually and in their  
official capacity as New York City Police Officer ARTHUR  
CLARKE (Shield No. 8001), and JOHN DOES 1-5

Defendants.  
-----x

Plaintiff Mohammed Liaket Ali, by his attorney, the Urban Justice Center, complaining  
of defendants, respectfully alleges as follows:

**PRELIMINARY STATEMENT**

1. Plaintiff brings this action for compensatory damages, punitive damages, and attorneys' fees pursuant to 42 USC §§ 1983 and 1988 for violations of his civil rights, as said rights are secured by said statutes and the Constitutions and laws of the United States and the State of New York.

**JURISDICTION**

2. This action is brought pursuant to 42 USC §§ 1983 and 1988 of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution and the laws of the State of New York.

3. Jurisdiction is founded upon 28 USC §§ 1331, 1343 and 2202. Plaintiff further invokes the supplemental jurisdiction of this Court to adjudicate pendant state law claims pursuant to 28 USC §1367.

07 CV 10614  
Hon. D. Cote

CITY OF N.Y. LAW DEPT.  
OFFICE OF THE CLERK  
2007 NOV 28 PM 3:50

VENUE

4. Venue is properly laid in the Southern District of New York under 28 USC § 1391(b).

JURY DEMAND

5. Plaintiff respectfully demands a trial by jury of all issues in this matter pursuant to Fed R. Civ. P. 38(b).

PARTIES

6. Plaintiff Mohammed Ali is a resident of New York City and a licensed New York City mobile food vendor.

7. Defendant City of New York is a municipal entity created and authorized under the laws of the State of New York.

8. Defendant, Officer Arthur Clarke is sued in his individual and official capacity as a New York City police officer and acted within the scope of his employment and under color of state law, to wit, under the color of the statutes, ordinances, regulations, policies, customs and usages of the State of New York and/or the City of New York.

9. Defendants John Does 1-5 are sued in their individual and official capacity as New York City police officers and acted within the scope of their employment and under color of state law, to wit, under the color of the statutes, ordinances, regulations, policies, customs and usages of the State of New York and/or the City of New York.

NOTICE OF CLAIM

10. Plaintiff, in furtherance of his state causes of action, filed timely notice of claim against the City in compliance with General Municipal Law § 50.

11. More than 30 days have elapsed since service of said notice and the City has failed to pay or adjust the claim.

FACTUAL AND GENERAL ALLEGATIONS

12. On the afternoon of August 23, 2007, plaintiff was vending hot dogs, pretzels, soda, and related beverages from his pushcart in a legal vending location on Cedar Street between Broadway and Church Street in Manhattan.

13. After being called by the managers of a farmers market that had set up adjacent to plaintiff's vending location, Officer Clarke instructed the plaintiff and his counsel that plaintiff must move from that block due to the presence of the farmers market.

14. Plaintiff and his counsel told Officer Clarke that plaintiff was engaged in his lawful vending business in a lawful location.

15. Officer Clarke and other uniformed officers seized the plaintiff's hot dog cart and all its contents. Officer Clarke and the other officers knew or should have known that they had no right to seize plaintiff's vending cart. A copy of the NYPD Property Clerk's Invoice is attached hereto as Exhibit A.

16. Officer Clarke issued plaintiff two Environmental Control Board ("ECB") summonses for allegedly vending food "from a cart that had less than 12 foot of a path around / front of cart" and for allegedly vending food "when ordered to move due to a market event and being in a non-legal spot." A copy of the ECB summonses is attached hereto as Exhibit B.

17. Officer Clarke and the other uniformed officers knew or should have known that plaintiff was not in fact vending at an illegal location or violating any other vending law.

18. The ECB summonses were both dismissed by an Administrative Law Judge at the ECB that same afternoon. A copy of the decision and judgment is attached hereto as Exhibit C.

19. That same afternoon, after the summonses were dismissed, plaintiff went to the First Precinct to attempt to recover his pushcart and its contents.

20. Plaintiff did recover his pushcart; however, he was instructed that all its contents had been discarded.

21. That same afternoon, plaintiff and his counsel confirmed that the contents of plaintiff's pushcart had been discarded at the NYC Sanitation garage at Canal and West Streets in Manhattan.

22. Officer Clarke and the other officers knew or should have known that they had no right to discard the contents of plaintiff's pushcart.

23. The seizure of plaintiff's pushcart and the discarding of all its contents were performed under color of law, within the scope of defendant Clarke's and John Doe 1-5's employment and authority, and for whose acts the defendant City is liable under the theory of *respondeat superior*.

24. The seizure and retention of plaintiff's pushcart and the discarding of all its contents violated clearly established rights under the Fourth, Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution, and were the direct and proximate cause of his damages.

25. The actions of the individual defendants were intentional, malicious, and in bad faith, thus giving rise to punitive damages.

#### DAMAGES

26. As a direct and proximate cause of the said acts of defendants, the plaintiff suffered the following injuries and damages:

a. Violation of his rights under the Fourth, Fifth, Eighth, and Fourteenth Amendment of the U.S. Constitution; and

- b. economic damages including loss of property and loss of income.

CAUSES OF ACTION

COUNT I – 42 USC § 1983 – UNREASONABLE SEIZURE

27. By their conduct, under color of law, defendants deprived Mr. Ali of his constitutional right to be free from unreasonable searches and seizures.

COUNT II – 42 USC § 1983 – PROCEDURAL DUE PROCESS

28. By their conduct, under color of law, defendants deprived Mr. Ali of his property without due process of law.

COUNT III – 42 USC § 1983 – SUBSTANTIVE DUE PROCESS

29. By their conduct, under color of law, defendants denied Mr. Ali his right to due process by depriving him of his property for arbitrary or irrational reasons.

COUNT IV – 42 USC § 1983 – MONELL CLAIM

30. New York City has maintained policies and customs exhibiting deliberate indifference to the constitutional rights of licensed street vendors with respect to the seizure of their vending pushcarts and property, which caused the violation of plaintiff's rights.

31. It was the policy and custom of the City to train, supervise and discipline officers, including the defendant officers, inadequately with respect to the rights of licensed street vendors with respect to the seizure of their vending pushcarts and property, thereby causing the defendants in this case to engage in the unlawful conduct described above.

32. As a direct and proximate cause of the City's deliberate indifference, defendants violated Mr. Ali's constitutional rights for which he suffered damages.

COUNT V – PENDANT STATE CLAIMS

33. By their actions, as set forth above, defendants committed conversion, outrageous conduct, negligence, gross negligence, and negligent hiring, retention and supervision under the laws of the State of New York.

34. At all relevant times, defendants Office Clarke and John Does 1-5, were employees of the City of New York, were acting for, upon, and in furtherance of the business of their employer and within the scope of their employment.

35. Consequently, the City is liable under the theory of *respondeat superior* for their tortious actions.

36. This Court has pendant jurisdiction to hear and adjudicate said claims.

WHEREFORE, plaintiff requests the following relief jointly and severally as against all the defendants:

1. Award compensatory damages in an amount to be determined at trial;
2. Award punitive damages in an amount to be determined at trial;
3. Disbursements, costs, and attorneys' fees; and
4. For such other and further relief as this Court may seem deem just and proper.

Dated: New York, New York  
November 26, 2007

Respectfully submitted,


  
DOUGLAS LASDON / DL 8705  
Urban Justice Center  
123 William Street, 16<sup>th</sup> Floor  
New York, NY 10038  
(646) 602-5600 phone  
(212) 533-4598 fax

Exhibit A

# PROPERTY CLERK'S INVOICE

**Check only one of the below categories.**

N 816901

☐ ARREST EVIDENCE

☐ INVESTIGATORY

☐ DECEDENT'S PROPERTY  
☒ PEDDLER PROPERTY

☐ FOUND PROPERTY

☐ OTHER \_\_\_\_\_

**DATE PREPARED:**

8/23 YR 2007

PCT. 001

Arresting/Assigned Officer <b>A. Clarke</b>		Rank <b>P.O.</b>		Shield No. <b>8001</b>		Tax Reg. No. <b>922122</b>		Command <b>001</b>	
Prisoner's Last Name <b>Ali, Mohammed</b>		First		Address (Include City, State, Zip Code, Apt.) <b>1180 Grand Concourse Bronx NY 10456</b>				No. of Prisoners <b>01</b>	
Date of Arrest <b>8/23/07</b>		Arrest No. <b>ECB/E161365436</b>		Charge/Offense Under Investigation <b>Less than 12' of path/Exigent Circ</b>				Fel. <input type="checkbox"/> Misd. <input type="checkbox"/> J.D. <input type="checkbox"/> Viol. <input checked="" type="checkbox"/> Complaint No.	
Finder's Property <b>270</b>				Address (Include City, State, Zip Code, Apt.)				Telephone No.	

ITEM NO.	QUANTITY	ARTICLE	CASH VALUE		(For Property Clerk's Use Only)	
			U.S. Currency Only		DISPOSITION	AND DATE
01	01	Metal food cartP/80602548				
02	01	Car battery				
03	01	Battery charger				
*****	*****	*****	*****	*****	*****	*****
		TOTAL				

Additional Invoice Nos. Related to This Case Including Motor Vehicles

Pink Receipt Copy of Voucher Issued ☐ Yes ☐ Refused

<b>R.T.O.</b>	Owner/Claimant's	Signature	Date	Time	Property Clerk Storage Location
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REMARKS: Briefly explain why the property was taken into custody (see instructions on BACK OF BLUE COPY).

At T/P/O deft. was issued 02 ECB's for Less than 12' of path/ notice to move exigent circumstances. All perishables and beverages were taken to NYC Sanitation garage Manhattan West 01 "canal and West St" Truck #25cn-469 Captain Accardo. Cart#60738.

Rank and Signature of Desk Officer <i>[Signature]</i>	Tax No. <i>5000</i>	Signature of Arresting/Assigned Officer	Boro Storage No.
PROPERTY ON THIS VOUCHER DELIVERED TO PROPERTY CLERK'S OFFICE BY:	Rank	Name	Command
Property Clerk's Signature			

N 816901

**DISTRIBUTION: WHITE - Prop. Clk. File      SECOND WHITE - Inventory Unit Copy**  
**BLUE - Police Officer's Copy      GREEN - Evidence Release/Investigation Copy**

**YELLOW - Prop. Clk. Work Copy**  
**PINK - Prisoner/Finder Receipt Copy**



Exhibit B

ENVIRONMENTAL CONTROL BOARD • NOTICE OF VIOLATION AND HEARING • FOR CIVIL PENALTIES ONLY  
City of New York, Petitioner vs Respondent:

LAST NAME: *Adams* FIRST NAME: *William* INITIAL: *W*  
STREET ADDRESS: *1688 Grand Concourse Apt 53*  
CITY: *Bronx* STATE: *NY* ZIP: *10456*  
40523295

TYPE OF LICENSE / PERMIT OR IDENTIFICATION NUMBER  
☐ 1 Consumer Affairs License  
☒ 2 Health Dept. License  
☐ 3 Motorist Identification  
☐ 4 Vehicle Plate  
☐ 5 Meter Number  
☐ 6 Soc. Sec. No.  
☐ 7 Cert. of Auth.  
☐ 8 Build. Reg. No.  
☐ 9 Telephone No.  
☐ 10 Other

ISSUED BY: \_\_\_\_\_

NOTICE ALSO SENT TO:  
LAST NAME: \_\_\_\_\_ FIRST NAME: \_\_\_\_\_ INITIAL: \_\_\_\_\_  
STREET ADDRESS: \_\_\_\_\_  
CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_

**NOT IN SYSTEM**

The Respondent is charged with violation of Law/Rule:  
 Date of Offense: *8/5/07* AM ☐ PM ☒ Time: *1:45*  
 Borough: *Manh* CB NO: *001* Violation Code: *3*  
 NYC ADMINISTRATIVE CODE/RULES OF THE CITY OF NEW YORK  
 1. ☐ "Air Code" Provisions 5. ☐ Sanitation Provisions 9. ☐ Park Rules 11. ☐ NYS Public Health Law  
 2. ☐ "Noise Code" Provisions 6. ☐ General Vendor Provisions 10. ☐ Other 12. ☐ NYC Health Code Provisions  
 3. ☐ "Water Code" Provisions 7. ☐ Food Vendor Provisions 13. ☐ NYS VTL  
 4. ☐ "Sewer Code" Provisions 8. ☐ Transportation Provisions 14. ☐ Other

SECTION TITLE: *11-315(a) less than 12' of Path*  
 At: ☐ Front of ☐ Opposite ☐ Place of Occurrence  
 DETAILS OF VIOLATION: *Resp was observed selling fecal from a cart that had less than 12' of path around front of cart.*

Property Removed: ☐ Yes ☒ No  
 ALTERNATIVE SERVICE: ☐ 1 1-2 Family ☐ 2 Multiple Dwelling ☐ 3 Commercial

Mail-in Penalty Schedule  
 \$25 \$50 \$100 \$250 \$ \_\_\_\_\_  
 1 ☐ 2 ☐ 3 ☐ 4 ☐ Other ☐ NO MAIL-IN PENALTY. YOU MUST APPEAR.  
 Vendor Multiple Offense Schedule (See Reverse Side) ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ 7 ☐ 8 ☐ 9

Maximum Penalty For Violation: \$ \_\_\_\_\_  
 or see reverse side

Date of Hearing: *18* Day of *Sept* 2007  
 8:30 AM 10:30 AM 1:00 PM 2:30 PM  
 1 2 3 4

Proceedings will be held under authority of the N.Y.C. Charter Section 1404 and the Rules of the City of New York at 15 RCNY Chapter 31.

WARNING: If you do not appear (or pay by mail if permitted) you will be held in default and subject to the maximum penalties permitted by law. Failure to appear or pay a penalty imposed may lead to suspension of your license or other action affecting licenses you now have or may apply for as well as the possibility of a judgment entered against you in Civil Court. FURTHER INSTRUCTIONS ON REVERSE SIDE.

I, an employee of the below agency, personally observed the commission of the civil violation charged above. False statements made herein are punishable as a class A Misdemeanor pursuant to section 210.45 of the Penal Law. Affirmed under penalty of perjury.

RANK (Title) SIGNATURE OF COMPLAINANT: *10*  
 COMPLAINANT'S NAME (Printed): *Clarke* AGENCY: *92212200*

8/23/07 AM-10:00 181  
 No. E 161 365 427

161365427

161 365 436

Exhibit C

# THE CITY OF NEW YORK ENVIRONMENTAL CONTROL BOARD

ECB 398 (02/07)  
Violation and Order



## LOCATED AT:

☒ 69 John Street  
10th Floor  
New York, NY 10038  
212-361-1400

☐ 233 Scheimerhorn Street  
11th Floor  
Brooklyn, NY 11201  
718-875-7428

☐ 144-06 94th Avenue  
Main Floor  
Jamaica, NY 11435  
718-298-7300

☐ 350 St. Marks Place  
Main Floor  
Staten Island, NY 10301  
718-815-8385  
212-361-1400

☐ 1932 Arthur Avenue  
6th Floor  
Bronx, NY 10457  
718-579-6844  
212-361-1400

## Disposition

In Violation  
Admission  
Dismissed

## Method of Appearance

☒ At Hearing  
☐ By Mail

H/T Master (2)

## DECISION AND ORDER

Violation #: 161 365 427 / 161 365 436  
Hearing Date: 8/23 20 07  
City of New York v.: Mohammed Ali  
Place of Occurrence: 90 Cedar St.  
Borough: Manhattan  
Issuing Officer: Clark Agency: DO

A Notice of Violation was duly served, charging that on 8/23 20 07, at 145 (am) (pm), the Respondent violated

( ) NYS Public Health Law § 1310 ( ) NYC Health Code § \_\_\_\_\_ ( ) Rule/Reg. § \_\_\_\_\_ of \_\_\_\_\_

(X) NYC Administrative Code: ( ) VTL

( ) § 16-116 ( ) \_\_\_\_\_  
( ) § 16-118 ( ) \_\_\_\_\_  
( ) § 16-120 ( ) \_\_\_\_\_  
( ) § 20-4 ( ) \_\_\_\_\_  
(X) § 17-315 (9) \_\_\_\_\_  
( ) § 24 ( ) \_\_\_\_\_  
(X) § 17-315 (1) \_\_\_\_\_  
( ) § 1224 (7) \_\_\_\_\_

(X) The Respondent appeared and entered a plea of ( ) Admit (X) Deny  
and a hearing was held before me on the above-cited date.

On the record before me, I find that:

- ☐ **VIOLATION:** At the time and place specified in the Notice of Violation, and upon any further findings stated below, the Respondent caused or permitted the violation, as charged.
- ☒ **DISMISSAL:** For the reasons stated below, the Notice of Violation is dismissed.

## ADDITIONAL FINDINGS OF FACT/CONCLUSIONS OF LAW:

See attached Decision

The Green copy of the Decision and  
The original Note were given to the Respondent

☐ **CIVIL PENALTY:** I order the Respondent to pay a **CIVIL PENALTY** of \$ \_\_\_\_\_

☐ **ADMISSION:** I admit the above-described violation

Signature

Date

Signature of Administrative Law Judge

Stamp and No.

Date

Date Mailed:

See back of this

DECISION and ORDER

Respondent: Mohammed Ali  
Date of hearing: August 23, 2007  
Nov #: 161 365 427  
161 365 436

The Respondent appeared and testified. Sean Basinski, Esq., also appeared and testified. The Respondent received two NoVs, one for Less Than 12 Foot Path under 17-315(a) (#161 365 427) and one for Notice to Move/Exigent Circumstances under 17-315(j) (#161 365 436).

As to #161 365 427, a review of the NoV shows that it fails to state a proper charge in that 17-315(a) does not require that there be a twelve foot path around the Respondent's cart. Accordingly, there is no violation. The NoV is dismissed.

As to #161 365 436, Respondent indicates, and Mr. Basinski who was present stated, that the Respondent did in fact move his cart after being spoken to by the officer. The cart had originally been in front of a bench (which prevented there being a twelve foot path around the cart) but it was moved to an area nearby which was not blocked by the bench. Photos were submitted in support of the claim. I find the Respondent's claim to be credible. I find that the Respondent did move after being requested to do so by the issuing officer. I find that the Respondent was not in violation. The NoV is dismissed.



Stephen B. Haken  
Administrative Law Judge # 787